



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 30, 2023

IN THE MATTER OF:

Appeal Board No. 627776

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 627776, 627777, 627778, the claimant appeals from the combined decisions of the Administrative Law Judge filed January 19, 2023, which modified the initial determination, holding the claimant ineligible to receive benefits, effective October 28, 2022, on the basis that the claimant did not comply with reporting requirements, to be effective December 1, 2022, through January 17, 2023, sustained the initial determination, holding the claimant ineligible to receive benefits, effective September 12, 2022, through September 18, 2022, on the basis that the claimant did not comply with work search requirements; charging the claimant with an overpayment of \$216.00 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the

claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100.00 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for unemployment insurance benefits on July 6, 2022, via the telephone, and her claim was made effective as of July 4, 2022. She received but did not read the unemployment insurance handbook.

The handbook advises claimants that they must make "systematic and sustained efforts" to find work, which is defined as doing at least three work search activities from the following list in each week that they are claiming benefits:

1. Using employment resources available at the local New York State Career Center, such as * Meeting with Career Center advisors, * Getting information from Career Center staff about jobs that may be available in a particular industry or region (obtaining job market information), * Working with Career Center staff to assess your skills and match them to possible occupations and jobs (skills assessments for occupation matching), * Participating in instructional workshops, and * Getting job referrals and job matches from the Career Center and following up with employers.
2. Submitting a job application and/or resume to employers or former employers who may reasonably be expected to have openings
3. Attending job search seminars, scheduled career networking meetings, job fairs or workshops that offer instruction in improving skills for obtaining employment
4. Interviewing with possible employers
5. Registering with and checking in with private employment agencies, placement services, unions and placement offices of schools, colleges, or universities and/or professional organizations
6. Using the telephone, business directories, internet, or online job-matching systems to search for jobs, get leads, request referrals, or make appointments for job interviews
7. Registering, applying, or taking job-related or pre-hire tests for a public or private employer, including civil service examinations
8. Any other reasonable activity that may help you obtain employment (12 NYCRR § 473.4 (c))

On September 12, September 13, and September 14, 2022, the claimant corresponded, via email, with a potential employer and scheduled an interview. The claimant applied for a financial sales' position, an associate store

manager position, an automotive sales' manager position, and a store sales' manager position on September 14. On September 16, the claimant applied for an assistant store manager position, an account representative position, a manager in training position, and a financial planner position. On September 18, 2022, the claimant applied for a store manager position at a fabric store.

The claimant certified for unemployment insurance benefits via telephone on September 18, for the week ending September 18, 2022. As part of the telephone certification, she affirmed that she was "actively seeking work...and (had) made at least three work search activities per week on different days of the week..." The claimant received \$261.00 in unemployment insurance benefits for the week ending September 18, 2022.

The initial determinations set forth herein were issued on October 31, 2022. On December 8, 2022, the Commissioner of Labor withdrew the initial determination holding the claimant ineligible for failure to report, effective October 28, 2022.

OPINION: The combined decision at issue herein was filed January 19, 2023, after the Commissioner of Labor had previously withdrawn the initial determination of failure to report on December 8, 2022. Consequently, we conclude, insofar as the combined decision modified and sustained the initial determination of failure to report, that such portion of the decision is rescinded.

We further note that 12 NYCRR § 473.4 (b)-(c) states "(b) A claimant's

"systematic and sustained efforts to find work" must include at least three work search activities per week. These activities must be conducted on different days of the week and must include at least one activity from paragraphs (1)-(5) of this subdivision... The list of acceptable work search activities outlined in the handbook is the same as the acceptable work search activities delineated in the regulations at 12 NYCRR § 473.4 (c). A claimant

may be found ineligible for failing to conduct a work search as required regardless of the implementation by the Department of Labor of a work search plan. It is well-settled that a claimant must have been provided with the information or counseled by the Department of Labor regarding what would be necessary to maintain eligibility. However, the claimant's concession that she received the handbook prior to the certification in question establishes that

she was provided with the information necessary to maintain her eligibility.
(See Appeal Board No. 626754)

The credible evidence establishes that the claimant performed a work search on three different dates for the week ending September 18, 2022. In so determining, we find that the claimant corresponded with an employer via email on September 12, September 13, and September 14, 2022, to arrange for a subsequent interview and submitted applications for employment on September 14, 16 and 18. As a result, the claimant performed three work search activities on three different days for the week ending September 18, 2022.

Although the prior decision found that the claimant had not performed an adequate work search because she had neglected to perform three different activities on three different days, the regulations do not mandate three different activities. As per the regulations, a systematic and sustained search for suitable work must include "at least three work search activities per week in an effort to obtain suitable work...conducted on different days of the week and include at least one activity from the activities 1-5 listed in subdivision c." (12 NYCRR § 473 (4)(b), emphasis added.) So long as the

claimant performed at least one activity from the activities listed as 1-5, and two additional activities on different dates, the work search requirement would be satisfied. As the claimant submitted applications for employment, activity 2, on three different dates, as well as arranged an interview, activity 6, on an additional day in that same week, we conclude that the claimant performed the requisite work search throughout that week. Consequently, we find that the claimant was therefore eligible for unemployment insurance benefits for the week ending September 18, 2022 and entitled to the unemployment insurance benefits which she received.

As the claimant was entitled to the unemployment insurance benefits which she received, she cannot be said to have been overpaid unemployment insurance benefits. Her certification, to having performed a work search, was true, known to be true and does not constitute a wilful misrepresentation to obtain benefits. Accordingly, we further conclude that neither a forfeit penalty nor a civil penalty may be imposed.

DECISION: The combined decision of the Administrative Law Judge in Appeal Board Nos. 627776, 627777, 627778 is modified as follows, and as so modified, is reversed.

In Appeal Board No. 627776, the initial determination, holding the claimant ineligible for failure to report, effective October 28, 2022, is withdrawn.

In Appeal Board Nos. 627776, 627777, 627778, the initial determinations, holding the claimant ineligible to receive benefits, effective September 12, 2022, through September 18, 2022, on the basis that the claimant did not comply with work search requirements; charging the claimant with an overpayment of \$216.00 in benefits recoverable pursuant to Labor Law § 597

(4); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100.00 on the basis that the claimant made a willful misrepresentation to obtain benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER